[*Submitting Counsel on Signature Page*]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

People of the State of California, et al.
v.
Meta Platforms, Inc., Instagram, LLC, Meta Payments, Inc., Meta Platforms Technologies, LLC

Office of the Attorney General, State of Florida, Department of Legal Affairs
v.
Meta Platforms, Inc., Instagram, LLC., Meta Payments, Inc.

State of Montana, *ex rel.* Austin Knudsen, Attorney General
v.
Meta Platforms, Inc., Instagram, LLC, Facebook Holdings, LLC, Facebook Operations, LLC, Meta Payments, Inc., Meta Platforms Technologies, LLC, Siculus, Inc.

IN RE: SOCIAL MEDIA ADOLESCENT ADDICTION/PERSONAL INJURY PRODUCTS LIABILITY LITIGATION

THIS DOCUMENT RELATES TO:
4:23-cv-05448; 4:23-cv-05885; 4:24-cv-00805

MDL No. 3047

Case No. 4:22-md-03047-YGR
4:23-cv-05448-YGR
4:23-cv-05885-YGR
4:24-cv-00805-YGR

STATE ATTORNEYS GENERAL'S REPLY IN SUPPORT OF MOTION FOR RELIEF FROM NONDISPOSITIVE PRETRIAL ORDER OF MAGISTRATE JUDGE

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Meta advances an extreme proposition here—that every time a state AG files a lawsuit in their independent enforcement capacity, that AG becomes responsible for the preservation and production of every potentially relevant document possessed by every state agency, department, division, officer, entity, board, or bureau, that the AG's office *in some states may* serve as counsel for in unrelated matters. No court in this country has made such a sweeping ruling. The ruling conflicts with basic principles of discovery and attorney obligations while undermining the dual-executive structure mandated by most state constitutions. There is no need for this extreme result—Meta has demonstrated it can obtain the documents it wants through Rule 45 subpoenas without disrupting the workings of state government. Meta's attempts to distract the Court with misleading and unrelated allegations of delay are unavailing. The AGs ask the Court to reject Meta's attempts to use party discovery to delay this case and to grant the AGs' Motion for Relief.

I. Meta misstates the nature of the AG-state agency relationship.

Meta argues that because some AGs *may* represent some state agencies in *unrelated* matters or in certain cases in responding to third-party subpoenas here, those agencies' documents are subject to party discovery here. This argument misunderstands the law firm-client relationship. Much like a law firm's entire book of business is not subject to party discovery every time one of that firm's clients is involved in a lawsuit, not all state entities are subject to party discovery merely because they *may* be represented by an AG in unrelated matters.[1] Meta's argument is thus inconsistent with this circuit's legal control test. *In re Citric Acid Litig.*, 191 F.3d 1090, 1107 (9th Cir. 1999).

Imagine that the AGs sought to obtain documents from TikTok, who they have not sued in this action, through party discovery requests to Meta. True, Meta's counsel, Covington & Burling, represents TikTok in related matters.[2] And, it is undisputed that TikTok and Meta

[1] Even for the limited set of nonparty agencies who have retained other lawyers in AG's offices to represent them in responding to subpoenas, "the State Attorneys General have no more power to acquire documents from the non-party agencies than any law firm representing a client." *U.S. v. Am. Express Co.*, No. 10CV04496, 2011 WL 13073683, at *3 (E.D.N.Y. July 29, 2011).

[2] *Litigators of the Week: Covington and DWT Push Back Against States' Legal Challenges to TikTok*, THE AM LAW LITIGATION DAILY, https://www.cov.com/-/media/files/corporate/publications/2023/12/litigators-of-the-week-covington-and-dwt-push-back-

(continued…)

engage in "close coordination," Doc. 1117, p. 15, in this matter. But that does not mean that Covington, and by extension Meta, has legal control over TikTok's documents for the purposes of this case. Were the AGs to seek TikTok's documents through a party discovery request served on Meta, Covington would surely object and argue that the AGs must seek those documents through a third-party subpoena. *See, e.g.*, *Am. Express Co.*, 2011 WL 13073683, at *3 ("[T]he private firms here would strenuously object if in bringing a lawsuit on behalf of one client . . . their adversary sought documents belonging to another client as party discovery. They would properly insist on the use of Rule 45.").

The situation here is no different. While the AGs *may* represent state agencies in *unrelated* matters, they do not represent them as parties in this case.[3] Instead, the AG is typically both counsel *and* client when bringing an independent enforcement action. So, just as Covington would object to a party discovery request aimed at TikTok, the AGs object to party discovery requests aimed at governor's offices and other agencies that they do not represent in this case. The AGs no more have legal control over those agencies' documents than Meta has legal control over TikTok's documents. Far from asking for special treatment, the AGs are simply asking that their representation in this matter be considered with the same guardrails as any other law firm.

Meta's misunderstanding of the law firm-client relationship permeates the unavailing arguments in its response. For every argument raised by Meta, the Court can ask a simple question: "would Meta make the same argument if the AGs were seeking party discovery from TikTok or another Covington client?" In every case, the answer would be "no." This inconsistency reveals the fundamental flaws in Meta's position.

II. Meta's counterarguments are otherwise incorrect and/or not determinative.

First, Meta incorrectly asserts that the order's holding that AGs control state agencies' documents is a factual determination subject to clear error review. Doc. 1181, p. 9. The determination of control was primarily a legal conclusion, and thus should be reviewed *de novo*.

against-states-legal-challenges-to-tiktok.pdf.

[3] As addressed in the AGs' motion, the Acting Director of the New Jersey Division of Consumer Affairs has brought this suit on behalf of that agency; none of the NJ state agencies from which Meta seeks documents are similarly situated. *See* Doc. 1168, pp. 10, n.4; pp. 34-35.

Meta submitted no evidence proving control, instead resting on legal arguments about the AGs' statutory relationships with state agencies, and the order made no factual findings. The Magistrate Judge weighed no evidence, heard no testimony, and made no credibility determinations, instead engaging in only legal work. *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 396 (2018). The order even rejected the AGs' factual assertions about who would represent agencies in responding to subpoenas as "an error of law." Doc. 1117, pp. 44, 77, 104. Even if control could be a mixed question of law and fact, the order's exclusive reliance on legal analysis necessitates *de novo* review. *U.S. Bank*, 583 U.S. at 396 ("[T]he standard of review for a mixed question all depends—on whether answering it entails primarily legal or factual work."). Further, the order's disregard of constitutional principles of federalism and state sovereignty requires *de novo* review. *See Adolph Coors Co. v. Wallace*, 570 F. Supp. 202, 206 (N.D. Cal. 1983) (explaining that where a First Amendment defense to discovery was raised, the court must "review this 'mixed question of law and fact' under the same standard of deference as would apply to a 'pure' question of law"); *U.S. Bank*, 583 U.S. at 396 n.4.

Second, Meta argues that the order "placed the burden on Meta to demonstrate control." Doc. 1181, p. 10. However, the order repeatedly analyzed whether there is a "statutory, legal, or administrative rule" that "prohibits [an AG] from accessing the documents of the state agencies at issue." *See*, *e.g.*, Doc. 1117, p. 47. Indeed, when ordering briefing on this issue, the Magistrate Judge ordered the parties to use their limited space to identify state laws prohibiting AGs from accessing state agency documents. Mar. 21, 2024 DMC Tr. at 7:4-9:4. In doing so, the order's legal control analysis placed undue emphasis on the *absence* of state laws precluding AGs' access to state agencies' documents. Meta cites to a single unpublished out-of-circuit order as support for assigning a place of prominence to the *absence* of state law in this equation. Doc. 1181, p. 11 (citing *Bd. of Educ. of Shelby Cnty., Tenn. v. Memphis City Bd. of Educ.*, 2012 WL 6003540, at *3 (W.D. Tenn. Nov. 30, 2012), *supplemented*, 2012 WL 6607288 (W.D. Tenn. Dec. 18, 2012)). However, Meta misreads that order, which merely noted that there was no *information* in the record belying a finding of control in that case. *Id.* Here, the Magistrate Judge presumed that Meta had met its burden of demonstrating control and shifted the burden to the AGs to identify

state laws rebutting that presumption. Such burden shifting is contrary to Ninth Circuit law. *U.S. v. Int'l Union of Petroleum & Indus. Workers, AFL-CIO*, 870 F.2d 1450, 1452 (9th Cir. 1989).

Third, Meta argues that the burden placed on state government by the order is an "unfounded hypothetical." Doc. 1181, p. 12. But the AGs' concerns are already playing out here. Meta has already asked the attorneys prosecuting this case to produce search terms and custodians on behalf of state agencies. But Meta has failed to explain how, absent those agencies' voluntary agreement, the prosecuting attorneys have authority to access the documents of those agencies to determine search terms and custodians. Thus, the attorneys who have entered appearances on behalf of the AGs in this case face an impossible choice: attempt to negotiate discovery on behalf of third-party agencies they do not represent or face sanctions for refusing to do so.[4]

Again, imagine that the Court ordered the Covington attorneys representing Meta in this case to negotiate search terms and custodians on behalf of TikTok. The Covington attorneys would surely object because they have no authority to represent TikTok in those negotiations absent TikTok's voluntary agreement.

Fourth, Meta argues that the cases cited by the AGs are inapposite. Doc. 1181, pp. 11-13. Not so. The AGs' cited cases stand for the helpful proposition (ignored by the order) that many courts faced with the same question have ruled against defendants because AGs "bring suit under their own authority," *Colorado v. Warner Chilcott Holdings Co. III, Ltd.*, 2007 WL 9813287, at *4 (D.D.C. May 8, 2007), and "agencies operate outside of the [AG]'s authority," *Am. Express Co.*, 2011 WL 13073683, at *3. Moreover, the fact that both parties can draw good-faith distinctions between related caselaw, and this case exposes the truth: the order is unprecedented.

Fifth, Meta argues "that the AGs represent the States as States, and, by extension, most state agencies." Doc. 1181, p. 14. This argument improperly conflates bringing an independent enforcement action with bringing an action on behalf of a specific state agency. The AGs have

[4] While some AGs are, as a matter of courtesy, asking their states' agencies to agree to discuss this matter, and conferring with Meta regarding its discovery requests of agencies, this does not waive any objections to the order's holding that they have legal control over those agencies' documents. And other state agencies have declined to voluntarily produce documents to AGs in these efforts, including the California Governor's Office, demonstrating that the AGs' access to the agencies' documents is by no means a matter of right.

brought this action in an independent enforcement capacity, not on behalf of their states' agencies. Instead, they bring this action to protect their citizen consumers. Multistate Complaint, Doc. 73-2, ¶¶ 21, 12. Critically, the AGs have not named state agencies as parties to the case and do not seek damages or other monetary recovery on behalf of state agencies.[5] Doc. 685, p. 8.

Meta's argument also violates federalism principles by disregarding the sovereign prerogative of each "State and its Legislature to define how governmental entities are to be separate and distinct and how they may relate to one another as a whole." *Am. Express Co.*, 2011 WL 13073683, at *2 (citation omitted). Under Meta's "broad and sweeping" argument, every government official in 35 states would be subject to party discovery in this case, including even state court judges. *U.S. v. Novartis Pharms. Corp.*, No. 11CV8196, 2014 WL 6655703, at *9 (S.D.N.Y. Nov. 24, 2014) (citation omitted).

Sixth, Meta argues that the AGs "do not explain why . . . recalcitrant state agencies . . . would comply with a Rule 45 subpoena when they would resist discovery propounded under Rule 34." Doc. 1181, p. 15. This argument misses the point. Because the AGs, bringing this case in their independent enforcement authority, do not represent those state agencies, the AGs cannot guarantee that those agencies will comply with Rule 45 subpoenas. Instead, those agencies will need to decide whether to object to the subpoenas in consultation with their own counsel. The very fact that the AGs cannot guarantee agency compliance with Rule 45 subpoenas shows that the AGs do not have control over those agencies' documents.

Again, imagine that the AGs asked Meta to produce TikTok's documents through party discovery in this case. Covington would surely object and insist that the AGs issue Rule 45 subpoenas. Meta's counsel would not be able to guarantee that TikTok would comply with those subpoenas. But it would nonetheless demand that the AGs follow the proper procedure in attempting to obtain TikTok's documents. Likewise, Meta must comply with the proper procedure to obtain discovery from third parties. Despite the Magistrate Judge reminding Meta that it could issue Rule 45 subpoenas to obtain its desired information from state agencies, it

[5] True, some recovery may end up in general funds—which ultimately fund state agencies—in some states. But that connection is far too attenuated to say that state agencies will benefit from this litigation.

waited months to do so. Feb. 22, 2024 DMC Tr. at 37:8-23; Apr. 22, 2024 DMC Tr. at 7:20-9:11; May 6, 2024 Hearing Tr. at 103:9-104:9. And despite having active negotiations with some of these agencies, many of whom had begun producing documents, after the order was issued, Meta informed state agencies that it was holding the Rule 45 subpoenas in abeyance. Meta's own actions have obviated any progress made in negotiations or productions from the recipient agencies. Therefore, Meta cannot say whether Rule 45 subpoenas would be effective because it has abandoned that option.

Seventh, Meta argues that "[n]o state agency . . . can lawfully refuse to comply with the Court's discovery order, even when not formally parties to this litigation." Doc. 1181, p. 15 (citing *Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958)). Meta's citation to this civil rights case misses the mark in both substance and tenor. In *Cooper*, the Supreme Court explained the Arkansas governor was obligated to comply with the constitutional requirement to integrate schools regardless of whether he was party to that case—not the same as asserting a non-party must comply with discovery orders.[6]

Eighth, Meta argues that the order "relied on many authorities" other than *Perez v. Perry*, No. SA-11-CV-360, 2014 WL 1796661 (W.D. Tex. May 6, 2014) for the principle that a lawyer controls a client's documents, "many of which the States ignore here." Doc. 1181, p. 16. But the order particularly relies on *Perez*—an out-of-circuit case that wields a different standard for control—citing it 74 times. None of the other cases cited in the order cure the improper reliance on *Perez*. *Williams v. Hawn*, held that where an AG defended prison employees, it also had access to Michigan Department of Corrections documents. 2022 WL 22859198, at *2 (W.D. Mich. Aug. 26, 2022). *Love v. New Jersey Dept. of Corr.* is also a prison employee case and uses the incorrect "practical ability" test. 2017 WL 3477864, at *5-6 (D.N.J. Aug. 11, 2017). *Synopsys, Inc. v. Ricoh Co.* also held that a lawyer had control of a private client's documents under the incorrect "practical ability" test. 2006 WL 1867529, at *2 (N.D. Cal. July 5, 2006).[7] Thus, none

[6] In any event, the trial court did join the governor as a party before issuing orders against him. *Faubus v. U.S.*, 254 F.2d 797, 803 (8th Cir. 1958).

[7] The order relies on *In re NCAA Student-Athlete Name & Likeness Litig.*, 2012 WL (continued…)

of these cases highlighted by Meta stand for the conclusion that a lawyer-client relationship is sufficient to show control under the *Citric Acid* test.

Finally, Meta argues that "an attorney-client relationship between an AG and an agency supports finding that the AG has legal control over the agency's documents." Doc. 1181, p. 17. This is a fundamental misinterpretation of the attorney-client relationship. Neither Meta nor the order cite to any authority, and the AGs have found none, standing for the broad proposition that a law firm, by virtue of its representation of a client, has on-demand legal control over the client's documents. Meta is careful to point out, without further explanation, that what is good for the goose would *not* be good for the gander. Meta explicitly cautions that this same misinterpretation may not be applied to a private legal services provider. *Id.* In other words, Meta suggests that Covington's representation of TikTok would not give rise to a presumption of legal control of TikTok's documents, but here, the Court *should* treat government attorneys differently by presuming a special relationship between AGs and their agency clients, which Meta argues legally mandates access to documents even in the absence of statutory authority. *Id.* This Court should decline to adopt Meta's arguments here, much less draw such a puzzling distinction.

III. Meta's allegations regarding delay in this matter are inaccurate and misleading.

Meta alleges the AGs have delayed discovery. Doc. 1181, p. 2. These allegations are mostly unrelated to state agencies; are misleading; and do not support affirming the order.

First, the AGs' actions in this dispute were prompt and consistent with the procedures required by the Magistrate Judge. Moreover, when Meta questioned the adequacy of the AGs' preservation practices, the Magistrate Judge declined to find there had been "even the hint of any kind of spoliation." July 11, 2024 DMC Tr. at 70:17-25. Meta mischaracterizes the AGs' compliance with the Court's required procedures and timelines as undue delay.

Second, Meta complains about the AGs' efforts to take affirmative discovery. This argument attempts to relitigate the Magistrate Judge's ruling denying Meta's request to prematurely curtail written discovery. Meta also casts doubt on its own stipulation to extend the

161240, at *4 (N.D. Cal. Jan. 17, 2012) to assert that *Synopsys* did not necessarily rely on the practical ability test and is therefore validly analogized to under the *Citric Acid* test. But *NCAA* did not say this, and *Synopsis* employs the wrong standard.

parties' agreed upon discovery and case schedule by describing the rescheduling of certain fact depositions as a unilateral decision of the AGs, rather than one necessitated by deadline adjustments the parties had agreed upon. These arguments are misleading and, more importantly, irrelevant: the issue before the Court is whether the order on state agency discovery was "clearly erroneous" or "contrary to law." Fed. R. Civ. P. 72(a).

Finally, it is irrelevant whether the AGs suggested—much like the PI/SD plaintiffs did—that a streamlined process could replace initial disclosures because the AGs do not have witnesses with direct knowledge of the claims at hand here. Jan. 25, 2024 DMC Tr. at 114-17. Meta also sought to waive its initial disclosures and agreed that "initial disclosures should be waived for all Parties in all three sets of cases." Doc. 548-1 at 5-6. The AGs provided initial disclosures to Meta eight months ago and those disclosures included no information about the state agencies at issue here. Again, this procedural history has no bearing on the challenged order.

IV. State Specific Arguments

1. Arizona: Meta misconstrues the Arizona Attorney General's ("AGO") representations related to the Arizona Department of Education ("ADE") and the Governor's Office of Strategic Planning and Budgeting ("OSPB") by claiming that AGO has "stated it has chosen not to represent those agencies." Doc. 1181, p. 18. AGO has not stated this, has not made such a choice, and does not have the ability to do so. OSPB is not represented by AGO; it obtains legal counsel from Counsel for the Governor's Office, over which AGO has not been found to have control by the order. ADE employs its own counsel, and, not by virtue of any choice made by AGO, has not been represented by AGO in connection with this matter at any time, despite Meta's service of a subpoena on ADE in July, as AGO previously avowed would be the case. Doc. 736-1, p. 4; May 6, 2024 DMC Tr. at 4-11.)

At the very least, the order errs as to Arizona by relying entirely on statutory construction divorced from the fact presented to the Court, unrefuted by Meta, that AGO, not through any choice made by AGO, does not here represent ADE or OSPB.

2. California: Meta continues to fundamentally misapprehend the import of California's dual-executive structure, in which the Attorney General and Governor are separate and

independently elected constitutional officers. "California" has not "threaten[ed] to violate" the order. Doc. 1181, p. 20. Rather, Governor Newsom's office, a non-party and independent executive officer, has simply declined to provide the Attorney General with access to agency documents, as is the Governor's constitutional prerogative. On this, Meta's threatens "waive[r]," *id.*, but the development post-dates the order and eviscerates any notion that the Attorney General "exercise[s] legal control over state agency documents for purposes of discovery." *Id.* at 6. This result is entirely consistent with controlling California authority, which the Attorney General has cited from the outset. *People ex rel. Lockyer v. Superior Ct.*, 19 Cal. Rptr. 3d 324, 337 (Cal. Ct. App. 2004) (agencies "are distinct and separate governmental entities, third parties under the discovery statutes"). Meta's contrary protestations—that separate, independent agencies are somehow parties to this law-enforcement action—are legally foreclosed*, see, e.g.*, *id*. at 336, and deride federalism and state sovereignty, *see, e.g.*, *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

3. Colorado: Colorado stands on its original objections that the order misconstrues state law and misstates the AG's position on privilege. Meta does no more than repeat those errors in its response. Colorado's contention that the AG's office operates in distinct capacities as affirmative law enforcement and agency counsel is not an "artificial distinction" or "false dichotomy"—positions Meta supports only by citation to the flawed order—but is instead a legally accurate description of distinct state laws providing distinct AG authority. Doc. 1168, p. 16. Meta claims, without record support, that Colorado has, earlier in this litigation, contradicted its representation that consumer protection attorneys do not represent agencies. Not so. Colorado has been consistent in its averments, and Meta's citations show no different. Doc. 738-1, p. 5 (Colorado submitting that agencies would be represented by the AGs office but that "these lawyers would not be members of the prosecution team, but rather lawyers in other divisions of the Attorney General's Office."); Doc. 738-4, p. 1 ("when the AG independently brings a CCPA action, the enforcement team's communications with third parties, including state agencies, are generally not privileged…").

4. Connecticut: Meta misconstrues a quote from *Bysiewicz v. Dinardo*, 6 A.3d 726 (Conn. 2010) to support its erroneous position that the Connecticut Attorney General ("AG") is the

exclusive legal representative for state agencies in Connecticut. *See* Doc. 1181, p. 31. The inapposite *Bysiewicz* case stands for the premise that agency commissioners generally are not actively practicing law. The court simply does not hold or imply that the CT AG is the only one who can perform legal services on behalf of state agencies. Susan Bysiewicz was Secretary of State and wanted to run for AG. Bysiewicz argued that serving as Secretary of State should count toward the AG requirement of at least ten years of active law practice. The Connecticut Supreme Court held that "[i]t is reasonable to conclude that the legislature conferred this responsibility on the ["AG"] in recognition of the fact that a state officer responsible for administering a particular statutory scheme typically will not have the legal status or experience to practice law. Thus, it is implicit in [Conn. Gen. Stat.] § 3-125 that the legislature believes that agency heads …generally are capable of carrying out their routine duties without having the high degree of legal skill …that characterizes the practice of law." *Bysiewicz*, 6 A.3d at 748, internal citations omitted.

5. Delaware: Meta's Opposition is bereft of any response to the specific issues raised by the Delaware AG in the Motion. For example, Meta quotes the order's clearly erroneous interpretation of Title 29, Section 2508(b) of the Delaware Code to claim falsely that the Delaware AG "ignores the Delaware Legislature's intention" in adopting the statute. Doc. 1181, p. 22. The Motion reflects that the Delaware AG's primary focus was the Legislature's stated intent: "that state agencies . . . have the discovery protections afforded to non-parties." Doc. 1168, p. 18 (quoting S.B. 295, https://legis.delaware.gov/BillDetail?LegislationId=109498). This intention is reflected in both the law's plain language and in the Legislature's public synopsis for the bill enacting it. *Id.* Meta failed to acknowledge, let alone address, either the synopsis or the statutory language. Doc. 1181, p. 21-22.

Meta also argues that Rule 34 would preempt Section 2508(b). *Id.* at 22. But Delaware (like the AGs more generally) "concedes that Rule 34 governs." Doc. 1168, p. 19. As set forth in the Motion, the question is not whether Rule 34 governs, but whether the Delaware AG has a legal right to "access" documents belonging either to the Governor – the State's "supreme executive" – or the state agencies operating under his direction. *Id.;* Del. Const. Art. III § 1. Meta again sidesteps this issue. Meta and the order suggest that federal preemption means a complete

disregard of state law, state sovereignty, and the State's constitutional structure. This is clearly erroneous and should be reversed.

6. Florida: Although Meta concedes that the Florida AG's action was *not* brought in the name of the State of Florida, it continues to rely on the unreported, vacated *Freyre* opinion, which specifically found the "State" was named as a defendant and held, before being vacated, that the Governor has the authority to obtain state agency documents and information and "therefore has 'control' over agency documents for purposes of Rule 34. *Freyre v. Hillsborough Cnty. Sheriff's Office*, Case No. 8-13-CV-02873T27TBM, 2016 WL 1029512, at *2 (M.D. Fla. Mar. 9, 2016), *vacated*, 813CV02873T27TBM, 2016 WL 4502463 (M.D. Fla. July 6, 2016). Here, neither the Governor, nor the State, is a party in Florida's action.

Meta will not incur additional burden by obtaining agency discovery directly through the Rule 45 subpoenas that it has already issued and discussed with Florida agencies. Further, contrary to Meta's assertion that the Florida AG's representation of agencies is automatic, agency representation by the AG occurs through an optional contractual relationship that requires the consideration, and execution, of a legal services agreement. Doc. 738-7, p. 1. Finally, Florida did not waive but specifically made its argument to the Magistrate that agencies are not required to retain the Florida AG when counsel is needed. *Id*.

7. Georgia: Georgia statute does not dictate that the Georgia Attorney General's Office ("AGO") has legal control over all agency documents. First, Meta argues that statute does not "expressly restrict" the AGO from accessing agency documents; but state agencies do not have inherent power and instead derive power from the Constitution and from statute—not from the absence of an "express restriction." *See Walker v. Ga. R. & P. Co*., 146 Ga. 655, 656 (1917) (holding that the Attorney General "has no authority to perform any act not legitimately within the scope of [ ] statutory and constitutional provisions."). Second, Meta does not dispute that its interpretation renders superfluous provisions like O.C.G.A. § 45-15-17 which grant the AGO the power to subpoena agencies. *See R.D. Brown Contrs., Inc. v. Bd. of Educ. of Columbia Cty*., 280 Ga. 210, 212-13 (2006). Finally, Meta does not dispute that its interpretation of Georgia law renders unfeasible the AGO's tasks litigating against state agencies, investigating state agencies,

or representing agencies at legal odds with one another. *See Barton v. Atkinson*, 228 Ga. 733, 739 (1972) (rejecting interpretations that "would result in unreasonable or absurd consequences not contemplated by the legislature"). It is inexcusable to interpret a sovereign state's statute to upend its legal framework in favor of perceived "efficiency" in a federal court proceeding.

8. Hawai'i: Regardless of the capacity of the Hawai'i Attorney General's (HI AG) representation, the HI AG lacks control over key legal decisions for its client agencies. *See Chun v. Bd. of Trustees of Employees' Ret. Sys. of State of Hawaii*, 87 Haw. 152, 952 P.2d 1215 (1998). Despite Hawai'i case law to the contrary, Judge Kang's Order conflates HI AG's mandatory representation with legal control, and Meta's failure to address this key flaw is telling.

Likewise, both the Order and Meta present flawed readings the two cases concerning agency discovery for Hawai'i. Not only did the *Lobsich* Court recognize that the "legal right" standard as the applicable standard, *see Lobisch* at *1, both parties asserted arguments under said standard in their respective letter briefs. *See* Brief for Plaintiffs at 3, *id.*, No. CV 20-00370 HG-KJM, (Entry No. 87); Brief for Defendant at 4-5, *id.* (Entry No. 90).

Applying the reasoning for other states in *Generic Pharms. (II)* would be inappropriate when Hawaii's framework was never examined, as the parties resolved the discovery dispute outside of Court. There, Hawai'i agreed to produce agency discovery because it was explicitly asserting claims on behalf of the agencies involved, unlike the present enforcement action.

9. Idaho: Meta improperly asserted that the Idaho OAG failed to explain why Judge Kang's holding should be reversed. The Idaho OAG's response was made in addition to the collective briefing. Judge Kang's holding turned on federal case law; issues that were well briefed and explained. It was unnecessary to repeat that analysis. Meta also incorrectly implies the Idaho OAG implicates other state agencies when it brings an enforcement matter under COPPA. The Idaho OAG is enforcing a statute that other Idaho agencies are not authorized to enforce; those entities are not implicated in this action. Finally, Meta improperly assumes that since Idaho has no statutes depriving the Idaho OAG of access to agency documents that it has free access to such documents. Meta's statement is incorrect and is belied by Judge Kang who correctly wrote, "Idaho [OAG] may only demand documents from [state agencies] if explicitly permitted by

statute." Doc. 1117, p. 92. Judge Kang also found that Idaho OAG does not have legal control, for the purposes of discovery, over the Idaho agencies in dispute. *Id.* at 92. The Idaho OAG does not have free access to agency documents, even when it represents such agencies. Upholding Judge Kang's order as it relates to Idaho would require the Idaho OAG to exceed the authority granted to it by the Idaho State Legislature.

10. Illinois: As an initial matter, the factual issues in dispute—the AG's representation of state agencies and the bounds of attorney-client privilege—were not ones the AG affirmatively raised. The Magistrate explicitly ordered the AG to address these issues in one page and subsequently used them as foundational support for his ultimate finding. In both instances, the Magistrate ignored the AG's express representations for his own erroneous version of the facts. First, it is *not* a foregone conclusion that the AG will represent all seven state agencies here. The AG does represent state agencies, absent unique circumstances, when issues are *litigated* in the courtroom, but state agencies receive and respond to *thousands* of subpoenas each year without any involvement by the AG. Second, the AG explained the privilege issue within the dual capacity construct. Where, as here, the AG acts as enforcer, he does not generally represent or act on behalf of state agencies. For purposes of *this* litigation, where no joint effort occurred and no pre-suit communications are known to exist, state agencies are most accurately conceptualized as third parties. *See, generally, Monsanto*, 2023 U.S. Dist. LEXIS 106151 at *14-18.

11. Indiana: Meta's response advances an inaccurate interpretation of Indiana law on which the Court's ruling rests. While the Attorney General represents agencies in litigation, there are exceptions for each agency identified by Meta, and, importantly, the agencies are not parties to this litigation. Doc. 1117, p. 99 (citing to Ind. Code § 4-6-3-2(a) re: Attorney General having charge of all "civil actions" in the name of the State or any state agency). Meta's argument is incorrect that *Generics II* had materially similar circumstances. *See* Doc. 1181, p. 27. In *Generics II* the State sought damages on behalf of the identified agencies, unlike Indiana's position here. The Indiana Attorney General may act as litigation counsel, not in-house counsel, for these agencies, and by conflating these responsibilities, the Court erred.

The Court's reading of Indiana's CID statute, Ind. Code § 4-6-3-3, would equally apply to a

finding that Indiana has legal control over Meta's documents, where the 'mechanism' to compel a third party to produce documents is the authority to issue formal process requesting the records during a pre-suit investigation. *Id.* at 100-101 (asserting "the statutory scheme here indicates support (and a legal mechanism for) information sharing between Indiana agencies and the Indiana Attorney General").

12. Kansas: What Meta characterizes as a "minor factual misstatement"—that the Kansas Attorney General would represent state agencies in this litigation, when it actually stated exactly the opposite—Doc. 1181 p. 28 was strongly relied upon by the Court in its decision and repeated multiple times throughout the analysis, leading to a clearly erroneous factual finding. Doc. 1117, p. 104-05.

Finally, the Court focused on the statement that an attorney-client privilege would exist between the Kansas Attorney General's Office and the state agencies if such a relationship was established. But such a privilege would arise *if* the AG and agencies entered into an attorney-client relationship, which does not exist at this time. Agencies are able to request representation under Kansas law, but are not required to do so. K.S.A. 75-702(a). Should the Court order the AG to produce discovery from these agencies, other privileges such as attorney work product or common interest may arise. Doc. 738-13, p. 1.

13. Kentucky: Meta, like the MJ Order, errs by conflating the KYOAG's role as chief law officer under KRS 15.020 with *legal control* over state agency documents in any and all matters, even where KRS 12.220 controls with respect to agencies' counsel. *See* Ky. Rev. Stat. 12.230. Legal control has not been found to exist when the entities are legally separate and the right to obtain documents upon demand has not been expressly given. *Citric Acid Litig.*, at 1107 (citation omitted). The Kentucky statutory scheme clearly articulates this legal separation as the Kentucky AG and Governor are separately elected officials, and the heads of the agencies subject to Meta's discovery are appointed by the Governor. Ky. Const. § 91; Ky. Const. 70; Ky. Rev. Stat. § 12.040. Additionally, the lack of a bar from accessing agency documents does not give the KYOAG the right to obtain those documents on demand. Despite Meta's argument that the KYOAG paid "short shrift" to the language of Ky. Rev. Stat § 367.160 (Doc. 1181, p. 30),

principles of statutory construction cannot permit "cooperation" to be defined to include the right to obtain documents from agencies when other provisions of the statute explicitly provide the specific agencies for which the KYOAG *does* have access to agency documents. Ky. Rev. Stat. § 367.160 (2-3). *Expressio unius est exclusio alterius*. *See Hughes v. Wallace*, 118 S.W. 324, 326 (Ky. 1939) ("The enumeration of particular things excludes the idea of something else not mentioned").

14. Louisiana: There are a couple issues with Meta's reply. First, this litigation differs from the *Generic II* (699 F. Supp. 3d at 357) decision in an important way. In *Generic II*, states brought claims on the behalf of certain state agencies. In this litigation, the LA AGO is not bringing any claims on the behalf of any state agencies. Second, the LA AGO is not arguing that consumer protection claims are not torts. Meta has not identified any torts directly involving the identified state agencies in this litigation. The LA AGO has not alleged that Meta committed any torts towards these state agencies, and Meta has not alleged that these state agencies committed any torts against Meta. Once again, even if this suit arises from a tort, it does not arise from a tort that directly involves the listed state agencies and, therefore, La. R.S. 49:257(A) does not apply. Intent, historical use, and common sense show La. R.S. 49:257(A) applies when the tort directly involves an agency. Meta did not cite any state authority that La. R.S. 49:257(A) applies when an agency is not directly involved with the tort claim. That is because there are no reported cases where the statute has been applied to an agency that was not directly involved in the tort.

15. Maine: Meta does not dispute that the finding of legal control was premised in part on the erroneous holding that the Maine Attorney General is statutorily obligated to represent state agencies in this action. Instead, Meta defends the finding of legal control based on (1) the Maine Attorney General's representation of state agencies in responding to subpoenas issued by Meta and (2) a truncated interpretation of an illustrative statute prohibiting the release of child protective records. The deficiencies of the first premise are explained in the State Attorneys General's common briefing, including the misplaced reliance on decisions in the *Generic Pharms*, *Monsanto*, and *Perez* cases. The deficiency of the second premise is that it ignores the plain language of Section 4008, which, contrary to the Order and Meta's contention, does not

create an exception to the rule prohibiting release of child protective records allowing release to outside legal counsel, but instead establishes an additional layer of protection "within the department" that limits access to such records to appropriate department personnel and counsel in carrying out child protective functions only. *See* Me. Rev. Stat. Ann. tit. 22, § 4008.

16. Maryland: Meta misrepresents both the proper party for Maryland, which is the Office of the Attorney General of Maryland (MOAG), and the arguments set forth by MOAG. Meta acknowledges that MOAG occupies a unique role in this litigation but asserts that "a suit brought by an agency on behalf of the State *qua* State is, in substance, a suit by the State itself." Doc. 1181, n.8. This is simply not how Maryland State government or MOAG is structured or authorized to act. When MOAG brings an enforcement action, whether it is an antitrust, securities, consumer protection, or a case under COPPA, such action is not on behalf of all State agencies. MOAG is not enforcing any statute that the other Maryland agencies Meta has identified are charged with implementing and OAG lacks authority to compel those agencies, operating under a different constitutional officer, to produce information. The MOAG has no more control over the documents sought by Meta than counsel to Meta has over documents that are possessed by unrelated third parties also represented by Covington. Meta has offered no authority for the proposition that an attorney controls documents that are in possession of a client otherwise uninvolved in the litigation who is represented by other attorneys at the same law firm.

17. Michigan: Meta's response to Michigan's position merely elaborates on the point that Michigan's Department of Attorney General may, in the appropriate course and case, represent certain subdivisions of state government. But a duty to represent state entities does not exist in a contextual vacuum; it requires a dispute triggering a request for representation. *See* Mich. Comp. Laws § 14.28 (representation arises as to individual actions). *Potential* representation does not establish custody or control; to hold otherwise puts the cart before the horse.

Indeed, applying the Magistrate Judge's order here yields instant proof of its error, as well as the importance of placing the attorney-client relationship into context: For those entities on whom Rule 45 subpoenas were never served, there has been no event triggering a request for representation of any extent. Surely, the Magistrate Judge lacks authority to order a non-party to

enter into an attorney-client relationship—yet, by surprise, the agency is now postured as though it had sued or been sued, contrary to Michigan law placing discretion to undertake the instant litigation exclusively in the hands of the Attorney General. *See Fieger v. Cox*, 734 N.W.2d 602, 613 (Mich. Ct. App. 2007). Even if proper creation of an attorney-client relationship grants attorneys a right of access to client-held documents—which grant of authority Michigan does not concede—short-circuiting that process is untenable as a matter of Michigan law and basic procedure.

18. Minnesota: First, Meta erroneously contends this enforcement action was brought on behalf of state agencies. Doc. 1181, p. 1. Not so. To reiterate, this lawsuit seeks to vindicate the public rights of the people of Minnesota; the MN AG does not represent agencies nor does it seek any agency relief. Second, Meta wrongly labels the MN AG as "akin to the State's in-house counsel." *Id.* at 34. But Minnesota's agencies employ their own in-house counsel that are not employed by the MN AG. While MN AG may serve as *outside* counsel for agencies, that separate and distinct function of the office is walled from the attorneys prosecuting this case who *do not* represent nor maintain any attorney-client relationship with such agencies. Indeed, the Minnesota Supreme Court and Minnesota Rules of Professional Conduct explicitly permit confining attorney-client relationships to different divisions and functions of the MN AG due to the AG's unique role. *State v. McLaren*, 402 N.W.2d 535, 543 (Minn. 1987); Minn. R. Prof'l Conduct Preamble. The Order's insistence that this reality is otherwise is clearly erroneous and contrary to the law. Likewise, the Order's interpretation of Minn. Stat. § 13.393 is clear error because that section only applies to "attorneys acting in a professional capacity *for a government entity*." (emphasis added). Here, the only government entity the attorneys are acting in a professional capacity for is the MN AG itself.

19. Missouri: Meta ignores the clear text of Missouri law and the position of the Missouri Attorney General ("MOAG") relative to state agencies, which are under control of the Governor. MOAG is not "supervis[ing] agencies in litigation" here. Doc. 1181, p. 35. Missouri state agencies are not parties in this matter. MOAG "is a separate entity" and "bring[s] the instant action exercising its own independent authority" rather than on behalf of any specific agency.

Doc. 1117, p. 144. Instead, Meta wants to convert the mere potential that an agency *might* (but might not) request representation from MOAG in response to a Rule 45 subpoena, and that the MOAG *might* (but might not) decide to represent them, into a finding of actual custody or control over these non-party documents. Potential representation does not establish custody or control. To hold otherwise puts the cart before the horse. It eviscerates the rights of Missouri agencies to retain their counsel of choice (including in-house counsel). It ignores the clear permissive text of Mo. Rev. Stat. § 27.060 (providing that the MOAG "may" choose to appear in actions). That there is no statute affirmatively "depriv[ing] the AG" of control of non-party documents is of no moment. MOAG is not representing those non-parties in this matter and it is Meta's burden to establish control.

20. Montana: Montana's position is not that it merely lacks "direct managerial supervision" over the Montana agencies from which Meta seeks discovery. Doc. 1181, p. 46, but that the Montana AG *lacks control over these agencies' documents*, both as a matter of state separation of powers principles and Montana statutory law. The agencies at issue (1) fall under the control of other executive branch officials, (2) their records are agency property, and (3) the Montana AG does not automatically represent the agencies as counsel under state law. Doc. 1168, p. 33. Meta's cited authority is not to the contrary. In *Shelby County*, 2012 WL 6003540, at *3, Tennessee law stated that "'[a]ll legal services required by'" the relevant agencies "'shall be rendered by, or under the direction of, the attorney general'" of Tennessee. Montana has no comparable statute, and indeed, the Montana AG is *not* representing any of the agencies in responding to Meta's discovery requests. Section 2-15-201(4) of Montana Code merely allows the governor to use the Montana AG as counsel for a claim against the state; it does not require the Montana AG to represent any state agency or even prefer that arrangement. And as Montana previously explained. Doc. 1168, pp. 32–33, the order's interpretation of Montana-specific caselaw was in error.

21. Nebraska: Meta's opposition continues in its flawed understanding of the practicalities of state government and the role of the Nebraska Attorney General in Nebraska's constitutional structure. Neb. Const. art. IV, § 6 (giving "supreme executive power" to the

Governor). Contrary to Meta's contention, Nebraska has never argued that its agencies would not be represented by either agency counsel or by our office. As described in the State's previous briefing, Doc. 738-22, p. 2, state agencies may elect to have the Legal Services and Civil Litigation Bureaus from the Nebraska Department of Justice represent them in responding to third-party subpoenas. That function is distinct, however, from the Consumer Protection Bureau's (CPB) role as enforcers of state law. *Id.* Because of this, the CPB works with state agencies on an arms-length basis unless seeking damages on their behalf. *Id.* Further, even if the CPB did have control, Judge Kang's order and Meta's position blatantly disregard principles of state constitutionalism and respect for federal-state comity. *Supra* at 3.

As to the subpoenas issued on state agencies in *U.S. et al. v. Google*, No. 1:23-cv-108-LMB (E.D. Va.), Meta make's Nebraska's own point (at 37). Google never sought to obtain documents from state agencies under Rule 34 party discovery presumably because it viewed those agencies as third parties subject only to Rule 35 subpoenas. The fact that a major technology company, in similarly structured state attorneys general litigation, did not even attempt to use party discovery as a mechanism to collect documents from state agencies is highly instructive of the proper approach when it comes to this case: Meta should serve Rule 45 subpoenas on state agencies.

22. New Jersey: Meta's response continues to conflate the NJ AG's role as counsel with his role as enforcer. It claims "no statutory support" exists for this dual authority, but state law expressly establishes these roles. *Compare* N.J. Stat. § 52:17A-4(d) and (h) (affirmative civil enforcement), *with* (g) (counseling role); *see also In re Advisory Comm. On Prof'l Ethics Op. 621*, 608 A.2d 880, 890 (1992) (NJ state government is "so varied, so multifaceted, so extensive that to regard it as one unitary monolithic employer/client is unrealistic"). Likewise, Meta's cite to N.J. Stat. § 52:17A-4(c) conveniently omits the part of the provision that limits the AG's authority to "control" litigation to when he is acting as counsel to the State as a *party* or was tasked by the other branches to decide a legal issue "submitted to him." *Id*. As neither is true here, Meta—who bears the burden, not the NJ AG—fails to meet the Ninth Circuit's legal control test. The NJ AG brought this action in his own name, with the Acting Director of DCA, to vindicate

claims they are uniquely authorized to bring. Because the Magistrate Judge's decision effectively directs the AG to obtain documents he has no actual control over, from nonparty state agencies who can neither enforce nor benefit from this litigation, it should be reversed.

23. New York: Meta's recitation of N.Y. Exec. Law §63(1) is incomplete: the OAG shall "have charge and control of all legal business of the departments and bureaus of the state… in order to protect the interest of the state." The OAG is not creating an unwritten exception: the statute grants OAG representational authority in circumstances where it protects the interests of the state, and Meta has not shown that OAG will conclude that interest is served here. The OAG's comment that it *may* represent the state agencies at issue expressly noted that each entity would have discretion over its representation—if an agency requested OAG representation, there would be an assessment of how representation may protect the interests of the state. Doc. 738-1, p. 20. Meta misplaces its reliance on a New York appellate case, which merely rejected a party's argument that a state agency could not invoke attorney-client privilege in a case where OAG's representation of an agency was undisputed. *See Morgan v. N.Y. State Dep't of Envt'l Cons.*, 9 A.D.3d 586, 587 (3d Dep't 2004). And courts substantively analyzing this issue have found that the OAG does not gain control of agency documents simply by suing on behalf of the state. *See U.S. v. Novartis Pharmaceuticals Corp.*, 2014 WL 6655703, at *9 (S.D.N.Y. Nov. 24, 2014).

24. North Carolina: Meta's central argument for North Carolina is that state law mandates that the AG will represent agencies in responding to a subpoena. This is legal error. Although North Carolina statutes identify the AG as counsel for all state entities, the fact that all state entities *can* rely on the AG as counsel does not mean that they are *required* to do so for every legal matter, including responding to subpoenas. Doc. 1168, pp. 36-37. Nothing in Meta's brief proves otherwise. *First*, though Meta fixates on N.C. Gen. Stat. § 147-17, that statute relates only to an agency's decision to hire "private counsel" (*i.e.*, outside counsel). *See id.* § 114-2.3(d) (defining "private counsel"). It has nothing to do with whether agencies can use their own in-house counsel for subpoena requests and similar legal matters. *Second*, N.C. Gen. Stat. § 114-2 simply lists the duties of the AG—again, the fact that the AG has a responsibility to serve as counsel for state agencies does not necessarily mean that those agencies have an obligation to use

the AG for all legal matters, including subpoena responses. Because neither of these statutes *requires* agencies to use the AG as counsel in responding to a subpoena, the Court was wrong to conclude that the AG necessarily enjoys "legal control" over all agency documents. He does not.

25. North Dakota: Meta's argument that because NDAG has the authority to sue on behalf of state agencies, he must be bringing *this case* on behalf of state agencies, is unsound. N. D. Cent. Code. § 54-12-17 provides the "consumer protection and antitrust division … shall act to enforce the consumer fraud laws," and in this case the NDAG is acting in a *parens patriae* and sovereign capacity to protect North Dakota's citizens and not on behalf of state agencies. The NDAG would not be representing any other state agency relating to this matter *but for* Meta's issuance of the Rule 45 Subpoenas. Since Rule 34 does not impose any obligation on non-parties, *see* F. R. Civ. P 34(c), the state agencies do not have a legal obligation to cooperate with the consumer protection and antitrust division. Meta's argument that "[n]o statute deprives the AG of access to agency documents" does not carry its burden under Rule 34, because in state government, a lack of prohibition on access does not equal a right to access, as a government official only has such powers as prescribed in law. *See e.g.* N.D. Const. Art. V, §2. Control under *In re Citric Acid Litig.*, requires a "legal right to obtain documents upon demand," and attempting to create such a right via order is clearly erroneous and contrary to law. 191 F.3d 1090.

26. Ohio: Contrary to Meta's assertions, Ohio does not concede that the Attorney General shall be legal counsel for all state agencies identified by Meta in discovery requests in this matter. Conversely, Ohio used its limited space in the Objection to explain how the Magistrate's reliance on Ohio antitrust statutes and unreported, unrelated caselaw was clearly erroneous when applied to this case brought forth under Ohio's Consumer Protection Statute. Further, the Magistrate's Order was contrary to law established by Ohio R.C. §109.02. While the statute states that, generally speaking, the Attorney General shall be legal counsel for state agencies, this language does not compel the Attorney General to bring every legal action that he files to be on behalf of every state agency that is under the Office of the Governor's control pursuant to the executive structure created by the Ohio Constitution. See Ohio Const. Art. III §5, and R.C. §121.02, 121.03. For these reasons and due to the fact that the Ohio Attorney General lacks control over agency's

documents, Ohio asserts that we are not legal counsel for all state agencies in this matter and that we cannot compel production, nor should we be involved in responding to what should appropriately be defined as third-party discovery.

27. Pennsylvania: Despite claims of offering no authority, Pennsylvania has continually pointed to the Commonwealth Attorney's Act ("CAA") where the legislature gave the AG decision making authority regarding agency representation. 71 Pa. Stat. Ann. §732-204(c). It is a "cardinal rule that a statute is to be read as a whole…since the meaning of statutory language, plain or not, depends on context." *Tavarez v. Klingensmith*, 372 F.3d 188, 190 (3d Cir. 2004). Basic statutory construction principles require the CAA be read in its entirety, including the legislature's intent. *Id*. *see also Commonwealth v. Carsia*, 517 A.2d 956, 958 (Pa. 1986)(citing the 1978 *Joint State Gov't Com Report,* which in pertinent part states, "[P]ossibly most significant**,** the [AG] is authorized to delegate…when it is most efficient or otherwise in the best interests of the Commonwealth.").[8] Like Meta's argument, the MDJ order stops at the first sentence of §732-204(c), and errs by mandating OAG representation of the agencies. The remainder of §204(c), interpreted along with the Legislature's intent, dictate otherwise.

28. Rhode Island: Defendant, like the Order, ignores the plain language of R.I. Gen. Laws § 42-9-6 which leaves it to agency discretion to "request" that the Rhode Island Department of Attorney General ("RIAG") represent them or to bring claims on their behalf. *Cf. O'Rourke v. Power*, 690 A.2d 342, 344–45 (R.I. 1997) ("[A]n attorney is not presumed to represent *all* state agencies, boards, and departments merely because he or she represents a *particular* state agency, board, or department."). Additionally, to correct Defendant's assertions in fn.23, in *State v. BTTR LLC* the RIAG is currently prosecuting a Deceptive Trade Practices Act claim (as it is here) and served a third-party subpoena (attached hereto as Exhibit 1) on a state agency seeking information in support of that claim. And like in any other civil law enforcement action brought solely by the Attorney General, the RIAG would likewise issue a Fed. R. Civ. P. 45 subpoena to any state agency were it to seek discovery as part of this litigation.

[8] *Joint State Government Commission*, "Office of Elected Attorney General: Final Report," pg. 10 (Sept. 1, 1978), available at https://tinyurl.com/mvp52eua.

29. South Carolina: Meta sets aside the most recent and specific articulation of South Carolina law on this matter and continues to rely on *State of South Carolina v. Purdue Pharma, L.P.*, No. 2017-CP-40-04872, 2019 WL 3753945 (S.C. Com. Pl. July 05, 2019), decided before proviso 59.16 was passed and thus no longer good law in South Carolina.[9] Doc. 1181, p. 43. Meta also emphasizes that federal law controls the question, but then relies solely on older and vaguer statutes. Meta offers no substantive reasons to cast off the controlling law at issue. *Id*. The South Carolina Attorney General is not, in fact, choosing to ignore any authorities, but instead properly considering the most recent, specific, and relevant authority that bears on the issue of whether the South Carolina Attorney General has control over certain state agency documents. The other provisions of South Carolina law cited by Meta are simply no longer pertinent. The South Carolina General Assembly has clearly and unequivocally set forth how the government of the state operates on this exact question, and this cannot be ignored or waived off by references to federal law that are in fact solely references to inapposite state law.

30. Virginia: Meta's response to the Commonwealth's argument persists in its misapprehension of the role of the Office of the Attorney General ("OAG") in the present action, relative to the OAG's representation of state agencies. Contrary to its statement that the Commonwealth "never grapples with" its acknowledgment that the OAG would represent agencies, Doc. 1181, p. 45, Virginia's opposition pointedly argues that this fact is inapposite. Pursuant to the Virginia Consumer Protection Act, the OAG is empowered to bring an action to protect "the consuming public." Va. Code § 59.1-197; *see also* Va. Code §§ 59.1-203, 259.1-206. This authority is separate and distinct from any statutory mandate to represent state agencies, as the Commonwealth has articulated. Moreover, Meta's statement that "[n]o statute deprives the AG of access to agency documents," Doc. 1181, p.45, misunderstands the role of the OAG as

[9] The SCAG reiterates that under the current laws of South Carolina, when the Attorney General brings an enforcement action as he has against Meta, he acts in the "public interest of the State of South Carolina and not as the legal representative or attorney of any department or agency of state government[.]" 2024-25 Appropriation Act Part 1B Section 59.16. "Departments, agencies, or boards are not parties to these actions, and the documents or electronically-stored information of such departments, agencies, or boards are not in the possession, custody, or control of the Attorney General." *Id.*

counsel, and ignores that no statute *authorizes* the OAG to access those documents, either. Access and legal control of a client's documents is not a presumed element of the attorney-client relationship; the same is true when the attorney is the OAG, and the client is a state agency.

31. Washington: Meta's dismissal of the role state agencies played in *Geo* highlights how it conflates party and non-party discovery. Here, Meta is asking for party-like discovery from non-party state agencies. The court in *Geo* permitted such discovery from state agencies that played a party-like role due to affirmative defenses. *Wash. v. GEO Grp., Inc.,* 2018 WL 9457998 at *3 (W.D. Wash. Oct. 2, 2018). *Geo* should not be expanded to permit party discovery from state agencies that play no party-like role. Meta's response also ignores the State's related discussion of *Wilson*, acknowledging the importance of this distinction. As the State discussed, *Wilson* involved state agencies that were direct parties and closely related to direct parties. *Wilson v. Wash. et al.,* WL 518615, Doc. 22, at 6-14. That is not the case here. As such, the reasoning in *Geo* and *Wilson* are not applicable.

32. West Virginia: Meta still incorrectly assumes that because the Attorney General may *request* an agency's cooperation when he represents that *agency* in litigation that he can in turn *demand* agency obedience when he separately represents the *State*. Yet Meta never explains that obvious disconnect—let alone support it with West Virginia authority. In a footnote, Meta even appears to suggest that the Attorney General can somehow seize agency documents and produce them against his sometimes-clients' express instructions, Doc. 1181, p. 46 n.26, a remarkable (and unsupportable) proposition under just about any law. *Contra, e.g.*, *Wallace v. Davis*, 362 F.3d 914, 920 (7th Cir. 2004) (providing "legal assistance … differs from an entitlement (let alone an obligation) to override a client's instructions"). And though it insists otherwise, Meta's position folds together the Attorney General's distinct constitutional responsibilities to represent the State and the State's agencies—even though it seems to concede those roles must be separate. Lastly, Meta continues to muddle the issue of attorney-client privilege. If Meta has concerns with privilege, it may raise them at the appropriate time; it may not transform those concerns into a means to dragoon the Attorney General into asserting authority over documents he does not have or control.

33. Wisconsin: As to Wisconsin, both Meta and the Order rely on the same clearly erroneous conclusion, namely that the Wisconsin Attorney General ("WI AG") admitted he is representing the Governor in pursuing this lawsuit. Doc. 1181 p. 47; Doc. 1117 p. 243. To emphasize: he did not, and he does not. To the contrary, the statute Meta cites, Wis. Stat. § 165.25(1m), provides that the governor may request that the WI AG represent "the state" **or** specific state agencies, officials, or employees. In this case, the WI AG represents only the state, not the governor and not any other state agency. And while the governor's pre-suit communications with the WI AG regarding a request under § 165.25(1m) may be privileged, a request from the governor that the WI AG represent the state in a lawsuit does not create an ongoing attorney-client relationship for purposes of that case. This flawed premise underlies the Order's entire analysis as to Wisconsin.

Indeed, neither Meta nor the Order cites any alternative basis for concluding the WI AG has a legal right to obtain records from other agencies, and Wisconsin law demands there be statutory authority for the WI AG's actions. *See State v. City of Oak Creek*, 232 Wis. 2d 612, 634 (2000); *State v. Snyder*, 172 Wis. 415, 417 (1920) ("In this state the Attorney General has no common–law powers or duties.") In these respects, the Order is clearly erroneous and contrary to law, and must be set aside.

V. Conclusion

Meta's attempt to seek state agency discovery is a thinly veiled effort to introduce inefficiencies and delay by subjecting 275 state agencies to party discovery, despite Meta abandoning its efforts to obtain information from more than half of those agencies using Rule 45 subpoenas. Meta's arguments seeking to bolster the challenged order are unsupported by the facts, Ninth Circuit authority, and state laws. The AGs ask the Court to grant their Motion for Relief from the order and to direct Meta to pursue any discovery it wishes to take from non-party state agencies through Rule 45. The AGs further ask the Court to reject Meta's request to go further than the Magistrate Judge did and hold that state agencies are parties to this proceeding.

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